Interesting Transnational Cases from the U.S. Supreme Court's "Long Conference," Earlier this Week

The Supreme Court's so-called "Long Conference" was held on Monday. At this meeting of the Justices to start the Court's new Term, they decide among the thousands of petitions that have piled up over the summer recess which ones warrant the Court's review. Looking at the petitions discussed in this conference can be a bellwether for the types of issues percolating through the U.S. courts. Here, I will provide a summary of a few that might be interesting to readers of this site.

First and foremost, regular court-watchers will see a rerun from last term, when the Court decided to resolve a stubborn split of authority regarding discovery pursuant to 28 U.S.C. 1782 and whether it can be invoked in support of a private, commercial arbitration. The case granted from last term (**Servotronics, Inc. v. Rolls-Royce PLC**) settled before it could be argued and decided, but the same issue has come forward again. The petition in **ZF Automotive US v. Luxshare Ltd**., from the Sixth Circuit, again asks "[w]hether 28 U.S.C. § 1782(a), which permits litigants to invoke the authority of United States courts to render assistance in gathering evidence for use in 'a foreign or international tribunal,' encompasses private commercial arbitral tribunals, as the U.S. Courts of Appeals for the 4th and 6th Circuits have held, or excludes such tribunals, as the U.S. Courts of Appeals for the 2nd, 5th and 7th Circuits have held."

Another common component of nearly every Supreme Court term are cases involving the Foreign Sovereign Immunities Act. This year is no different—and it is another case of World War II-era stolen artwork. This year, the petition in **Cassirer v. Thyssen-Bornemisza Collection Foundation** asks "[w]hether a federal court hearing state law claims brought under the Foreign Sovereign Immunities Act must apply the forum state's choice-of-law rules to determine what substantive law governs the claims at issue, or whether it may apply federal common law." This issue presents another split of authority on federal statutory

interpretation, with the Ninth Circuit in conflict with the Scond, Fifth, Sixth and D.C. Circuits.

The Federal Arbitration Act is another frequent flyer on the Supreme Court docket. Among several petitions regarding this Act is an interesting decision from the highest court in Delaware, which seemingly split from the decisions of two federal appellate courts and failed to apply the Supreme Court's increasingly stringent guidance to enforce arbitration agreements. The question presented in **Eni USA Gas Marketing LLC v. Gulf LNG Energy, LLC** is, in essence, whether the Federal Arbitration Act allows a court to disregard a broadly-written arbitration clause—which vests the question of arbitrability to the arbitrators—simply because one party asserts that the claim to be arbitrated constitutes a "collateral attack" on a prior award.

Some of these petitions may be granted—statistically, most will not. But even if they are denied, their inclusion here demonstrates the discord that exists among the U.S. court on issues that touch upon international litigation, arbitration, and foreign sovereign relations.

For a full accounting of the most promising cases discussed at the "long conference," and links to the pleadings in the cases discussed above, see the exhaustive treatment done here by SCOTUSBlog.